HON'BLE THE CHIEF JUSTICE SHRI G.S. SINGHVI
AND
HON'BLE SHRI JUSTICE C.V. NAGARJUNA REDDY

Writ Appeal No. 516 of 2007

Between:

K. Demudu

… Appellant

And

M/s Visakhapatnam Steel Plant,
Rep. by its General Manager(Personnel)
C. Appa Rao, Visakhapatnam & others

… Respondents

:: J U D G M E N T ::

Counsel for the appellant : Shri K.V. Subrahmanya Narusu

Counsel for respondent No.1 : Shri V. Ravinder Rao

June 25, 2007

Per G.S. Singhvi, CJ

Whether Industrial Tribunal-cum-Labour Court, Visakhapatnam (hereinafter described as 'the Labour Court') could entertain the application filed by appellant – K. Demudu under Section 2-A(2) of the Industrial Disputes Act, 1947 (for short, 'the Act') as amended by Andhra Pradesh Act No.32 of 1987 in the matter of his non-

employment in the services of Visakhapatnam Steel Plant (respondent No.1 herein) and pass award dated 8.1.1997 for his appointment as Kalasi with effect from 4.9.1990 with continuity of service, is the question which arises for determination in this appeal filed under Clause 15 of the Letters Patent against order dated 24.1.2007 passed by the learned Single Judge in Writ Petition No.7232 of 1997.

Section 2-A(1) and (2) of the Act, which are relevant for deciding the above noted question, read as under:

> "**2-A. Dismissal, etc., of an individual workman to be deemed to be an industrial dispute:-**Where any employer discharges, dismisses, retrenches or otherwise terminates the services of an individual workman, any dispute or difference between that workman and his employer connected with, or arising out of, such discharge, dismissal, retrenchment or termination is deemed to be an industrial dispute notwithstanding that no other workman or any union of workmen is a party to the dispute.
>
> (2) Notwithstanding anything in Section 10, any such workman as is specified in sub-section (1) may, make an application in the prescribed manner direct to the Labour Court for adjudication of the dispute referred to therein; and on receipt of such application, the Labour Court shall have jurisdiction to adjudicate upon any matter in the dispute, as if it were a dispute referred to or pending before it, in accordance with the provisions of this Act; and accordingly all the provisions of the Act, shall apply in relation to such dispute as they apply in relation to any other industrial dispute."

The term "industrial dispute", as defined in Section 2 (k) of the Act, means any dispute or difference between employers and employers or between employers and workmen or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour of any person. There was a good deal of conflict of judicial opinion on the interpretation of the above definition. While some courts took the view that a dispute between an employer and a single workman cannot be treated as an industrial dispute, other courts held that it could be treated as an industrial dispute. The third view was that

an individual dispute cannot per se be an industrial dispute, but it can become such dispute if the cause of the individual workman is taken up by a trade union or a substantial number of workmen employed in the industry. The last view was approved by the Supreme Court in **Central Provinces Transport Services Ltd. v. Raghunath Gopal Patwardhan**[1]. In **Workmen of Dimakuchi Tea Estate v. Dimakuchi Tea Estate**[2], the Supreme Court held that the liberal construction of the expression "any person" used in the definition of "industrial dispute" was impermissible. In **Workmen v. Dharam Pal Prem Chand**[3], the Supreme Court ruled that notwithstanding the width of the words used in Section 2(k), a dispute raised by a single workman cannot become an industrial dispute unless it is supported either by his union or in the absence of a union, by a substantial number of workmen. The same view was reiterated in **Workmen of Indian Express Newspaper Pvt. Ltd. v. Management of Indian Express Newspaper Pvt. Ltd.**[4].

The above interpretation of the definition of the term "industrial dispute" created serious difficulty for individual workman, who could not persuade the trade union or his co-employees to espouse his cause. A large number of representations were made to the government to amend the Act so as to enable the individual workman to avail remedy against arbitrary action of the employer without the necessity of espousal of his cause by the trade union or his fellow employees. This led to the enactment of Section 2-A of the Act, whereby an individual dispute connected with discharge, dismissal, retrenchment or termination is deemed to be an industrial dispute notwithstanding that no trade union or co-workman espouses such dispute.

The Legislature of the State of Andhra Pradesh went a step further. By Andhra Pradesh Act No.32 of 1987, sub-section (2) was inserted in Section 2-A so as to facilitate raising of dispute by

individual workman without undergoing the process of conciliation proceedings and reference by the State Government. Sub-section (2) of Section 2-A, which begins with a non-obstante clause, lays down that any workman, as specified in sub-section (1), may make an application in the prescribed manner directly to Labour Court for adjudication of the dispute referred to therein and on receipt of such application, the Labour Court acquires jurisdiction to adjudicate on any matter in the dispute as if it was a dispute referred to or pending before it, in accordance with the provisions of the Act. The expression "any such workman" appearing in sub-section (2) of Section 2-A makes it clear that an application in relation to the dispute can be filed under sub-section (2) only if the dispute relates to discharge, dismissal, retrenchment or termination of his service. This necessarily excludes all other disputes from the purview of Section 2-A. In other words, a workman employed in an industry within the State of Andhra Pradesh, who is aggrieved by the action of the employer in relation to his conditions of service other than dismissal, discharge, retrenchment or termination of service, cannot make an application under Section 2-A(2). Such workman has to necessarily resort to the procedure prescribed under the Act for reference of the dispute.

A perusal of the record of this case shows that the appellant filed an application under Section 2-A(2) for issue of a direction to respondent No.1 to provide him employment by alleging that his land was acquired by respondent No.1 for the Steel Plant; that he was issued "R-Card No.20" for providing job in respondent No.1; that he was registered with Employment Exchange as a displaced person; that in January, 1992, he came to know about striking of his name from the rolls of Employment Exchange and that even though he was selected in August, 1990 for appointment as Casual Kalasi, the management failed to appoint him on the untenable ground of his having crossed the upper age limit.

In the counter filed on behalf of respondent No.1, the very

maintainability of the application and the jurisdiction of the Labour Court to entertain the same were questioned on the premise that there is no relationship of master and servant. On merits, it was pleaded that the appellant was not selected as Casual Kalasi and that his name was not included in the list of selected persons.

On the pleadings of the parties, the Labour Court framed the following points:

1) Whether this court has got jurisdiction to entertain the petition?
2) Whether the petitioner is selected as Kalasi by R-1 as alleged?
3) What relief is the petitioner entitled?

After considering the evidence produced by the parties and hearing their advocates, the Labour Court held that the issue relating to non-employment constitutes an industrial dispute and, as such, it had jurisdiction to entertain the application filed by the appellant. The Labour Court further held that the appellant had been selected for appointment as Casual Kalasi and the management of the Steel Plant was under an obligation to appoint him in accordance with the scheme. Accordingly, award dated 8.1.1997 was passed for appointment of the appellant as Kalasi with effect from 4.9.1990. The operative part of the award reads as under:

> "In the result, the petition is allowed and award is passed directing R1 to give appointment to the petitioner as Kalasi w.e.f. 4.9.1990 with continuity of service but without back wages and pay him compensation of Rs.10,000/- (Rupees Ten Thousand only). Time for appointment and payment of compensation, three months from the date of receipt of copy of this award by R1, failing which R1 shall pay regular wages to the petitioner and interest @ 12% p.a. on the compensation amount."

The learned Single Judge held that Section 2-A(2) confers limited jurisdiction on the Labour Court to entertain a petition filed by the workman in respect of the dispute relating to discharge, dismissal, retrenchment or other termination of an individual by an employer, and other disputes which can be raised under Section 10 cannot be

agitated under Section 2-A(2).

Sri K.V. Subrahmanya Narusu argued that a dispute relating to non-employment falls within the definition of “industrial dispute” and, therefore, the Labour Court did not commit any jurisdictional error by entertaining the application made by the appellant. He further argued that even if the learned Single Judge had any doubt regarding the competence of the Labour Court to entertain the application filed by the appellant, he should not have interfered with the award because substantial justice had been done to the parties.

We have considered the submissions of the learned counsel, but have not felt impressed. At the cost of repetition, we consider it necessary to observe that the deeming provision contained in Section 2-A is limited to disputes relating to dismissal, discharge, retrenchment or termination of service. Therefore, even though dispute relating to non-employment may fall within the definition of “industrial dispute” under Section 2(k), the same cannot be made subject matter of an application under Section 2-A(2) of the Act.

Admittedly, the dispute raised by the appellant did not relate to dismissal, discharge, retrenchment or termination of his service. Therefore, we do not have any hesitation to record our approval of the view taken by the learned Single Judge that the Labour Court did not have jurisdiction to entertain the application filed by the appellant.

In the result, the appeal is dismissed. However, it is made clear that this judgment shall not preclude the appellant from availing appropriate legal remedy including the one by way of seeking reference under Section 2(k) read with Sections 10 and 12 of the Act.

G.S. SINGHVI, CJ

C.V. NAGARJUNA REDDY, J

25.06.2007

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[1] (1957) 1 LLJ 27

[2] (198) 1 LLJ 500

[3] (1965) 1 LLJ 668

[4] (1970) 2 LLJ 132